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April 25, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Rm. TW-B-204
Washington, DC 20554

Re: CC Docket No. 00-65: *Application of SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Texas*

Dear Ms. Salas:

Enclosed for filing in the above referenced docket are one (1) original and two (2) copies of the Evaluation of the Public Utility Commission of Texas, with confidential information redacted. Also enclosed is a 3.5 inch computer diskette with an electronic copy of the Evaluation in redacted form. We are filing a confidential portion of the submission under separate cover.

Thank you for your attention to this matter.

Sincerely,

Pat Wood III
Chairman

Enclosures

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REDACTED—FOR PUBLIC INSPECTION

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

IN THE MATTER OF

APPLICATION OF SBC	**§**	
COMMUNICATIONS, INC. PURSUANT	**§**	
TO SECTION 271 OF THE	**§**	
TELECOMMUNICATIONS ACT OF	**§**	**CC DOCKET NO. 00-65**
1996 TO PROVIDE IN-REGION,	**§**	
INTERLATA SERVICES IN TEXAS	**§**	

THE EVALUATION OF
THE PUBLIC UTILITY COMMISSION OF TEXAS

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CHAIRMAN

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PUBLIC UTILITY COMMISSION
OF TEXAS
1701 N. CONGRESS AVENUE
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APRIL 26, 2000

REDACTED—FOR PUBLIC INSPECTION

I. EXECUTIVE SUMMARY

Southwestern Bell Telephone Company (SWBT) filed its application to provide in-region, interLATA services in Texas on January 10, 2000. In a March 31, 2000 *ex parte* to the Federal Communications Commission (the Commission or FCC), SWBT indicated its intent to supplement the application, asking that the 90-day timeframe for Commission review be restarted.

In its first Evaluation filed on January 31, 2000, the Texas Commission concluded that SWBT had opened its local market to competition and had satisfied the comprehensive list of Section 271 criteria for long distance entry. The Texas Commission's recommendation followed a lengthy two-year process that included countless days of hearings, workshops, and collaborative sessions; testing of SWBT's OSS systems by a third party; and development of a Section 271-compliant interconnection agreement that contained a comprehensive set of performance measurements and a performance remedy plan. In its Section 271 process, the Texas Commission sought participation by large and small competitive local exchange carriers (CLECs) desiring to provide or providing service using each of the three modes of entry.

On April 5, 2000, SWBT supplemented its original application on some specific issues in response to concerns raised by various parties, including the Department of Justice (DOJ):

- The integration of operations support systems (OSS) used by CLECs to obtain unbundled network elements;
- The coordination, timing and quality of the "hot cut" process used to provide unbundled loops to CLECs; and,
- The non-discriminatory provisioning of loops used by CLECs to provide advanced services.

The Texas Commission has reexamined the record evidence, analyzed SWBT's supplemental filing, reviewed further performance measurement data, engaged a third party to conduct a review of OSS integration issues, and broadened the scope of previously-scheduled post-271 proceedings into three full-day and one half-day workshops attended by SWBT and a broad range of Texas CLECs to develop a record on these specific issues. Based upon the foregoing, the Texas Commission affirms that SWBT has taken the statutorily required steps to open its local exchange and exchange access markets in Texas to competition.

OSS Integration. SWBT has taken several steps to assure the Commission that CLECs can integrate EDI pre-order and order functionality. First, Telcordia reviewed documentation and other available information to determine whether SWBT provides sufficient support to CLECs to allow CLECs to integrate pre-order and order functions in EDI. Second, because many CLECs complained of problems with the parsing of addresses, SWBT issued an Accessible Letter in March 2000 indicating that, working through the change management process, SWBT will only require telephone

numbers on a conversion order and will not require an address as of May 27, 2000. Third, to further assist CLECs with integration, SWBT has entered into an agreement with General Electric Global Exchange Services (GE) to provide assistance to requesting CLECs at SWBT's expense to assist with integration. Fourth, letters from two Texas CLECs indicate that they have successfully integrated pre-order and order functions. The Texas Commission is aware of other CLECs who also have integrated pre-order and order functions successfully but who have not provided such letters. Fifth, SWBT included data in its supplemental filing showing a decline in EDI reject rates, even as EDI volumes are increasing. Based upon the discussion set forth in Section II herein, the Texas Commission finds that CLECs are able to successfully integrate EDI pre-order and order functions.

Provisioning of Unbundled Loops. SWBT has taken the following additional steps to address concerns about its unbundled loop conversion performance. First, SWBT worked with several CLECs to reconcile unbundled loop conversion performance measurement data. Second, SWBT continued working with AT&T to reconcile outage data. Third, SWBT worked with CLECs in Texas Commission workshops held on April 13, 15 and 17 to address reconcilation issues, as well as to conduct the six-month review of unbundled loop conversion performance measures. SWBT and CLECs agreed to develop a performance measurement to track post-provisioning outages. Fourth, SWBT provided updated performance measurement and outage data, allowing the Texas Commission to conduct an extensive evaluation of all performance measurement and outage data to ascertain SWBT's performance. Based upon the discussion set forth in Section III herein, the Texas Commission finds that SWBT is able to provision loops through the coordinated hot cut process in a manner that gives CLECs a meaningful opportunity to compete. In addition, SWBT has developed a frame due time process as an alternative method of unbundled loop conversion. The Texas Commission has not tailored the unbundled loop conversion performance measurements to the frame due time process as of this filing, but SWBT has been tracking its recent frame due time performance using PMs 114, 144.1, and 115, as developed for coordinated hot cuts.

Provisioning of Unbundled Loops for Advanced Services. SWBT has taken the following additional steps to address the concerns about the non-discriminatory provisioning of loops used by CLECs to provide advanced services. First, SWBT submitted additional performance measurement data indicating that performance is improving. Second, SWBT worked with CLECs in Texas Commission workshops held on April 13 and 14 to address issues relating to implementation of the Texas Commission's January 2000 DSL arbitration award and performance. Third, SWBT has committed to make line sharing available through an attachment to the Texas 271 Agreement as required by the Commission and has set forth the terms and conditions of its offer. Fourth, SWBT has clarified its relationship with Advanced Services, Inc. (ASI), its advanced services affiliate. Based upon the discussion set forth in Section IV herein, the Texas Commission finds that SWBT's performance on DSL is adequate on this subset of loops and thereby concludes that checklist item four has been satisfied.

In recommending approval of SWBT's application, the Texas Commission is mindful of the fact that SWBT's application is not perfect; perfection, however, is not the standard. The Texas Commission has invested a tremendous amount of resources to ensure that the local market in Texas is open to competition. Although the FCC has provided some guidance on various issues through orders in previous Section 271 applications, many of the issues the Texas Commission resolved through the collaborative process were issues of first impression. The decisions the Texas Commission made on unbundled loop conversion performance measures fit into that category. The FCC has never promulgated a rule on the appropriate performance measure and the Texas Commission did not have the benefit of the FCC's decision in *Bell Atlantic New York* at the time it set the measures. Although SWBT has brought forth sufficient evidence of its compliance with the *Bell Atlantic New York* standards, the Texas Commission would caution against an outright application of these standards in this docket for at least two reasons. First, the Texas Commission worked diligently with SWBT and CLECs to develop performance measurements that work in Texas—Texas is not New York, and performance measurements are not necessarily "one size fits all." Second, other state commissions recognize the commitment in time and resources that the Texas Commission has made to ensure an open local market and to build an adequate Section 271 record. States will be reluctant to develop performance measures if those measures are replaced by fiat with constantly evolving standards set by other tribunals.

Perhaps most important of all, the Texas Commission remains committed to making local competition work and to providing a forum for CLECs to raise concerns about SWBT's actions or inactions even after Section 271 relief is granted:

- The Texas Commission will continue to review performance measurement data on a monthly basis and will conduct a thorough review of the measures every six months. The next all-day performance measure review sessions are scheduled for May 1st through the 3rd.
- The Texas Commission will also continue to monitor the SWBT/CLEC working groups such as the trunking forum,[1] the CLEC users' group, the DSL working group,[2] and the Operations Support Systems Change Management Process.
- Additionally, CLECs may use both formal and informal processes to lodge complaints against SWBT for anticompetitive behavior or behavior that violates the terms of their interconnection agreement. For example, the Texas Commission established an informal process[3] that allows SWBT or CLECs to raise OSS implementation issues and have those issues resolved quickly, because the Texas Commission understands the importance of avoiding delay in an evolving competitive marketplace. Texas Commission rules also allow either party negotiating a request for interconnection, services or network elements to

[1] The last trunking forum took place on April 18, 2000; Texas Commission staff attended the forum.
[2] A DSL working group meeting, facilitated by Texas Commission staff, took place on April 25, 2000.
[3] *Informal Dispute Resolution for Issues Relating to Operations Support Systems*, PUCT Project No. 21000.

seek the assistance of the Texas Commission in mediating their differences.[4] The Texas Commission rules also provide an abbreviated process—post-interconnection agreement dispute resolution—for CLECs or SWBT to air disagreements over interpretations of an interconnection agreement.[5] Under the Texas Commission rules, a party may seek expedited relief in a post-interconnection agreement dispute.[6] Parties may also seek interim rates and terms in post-interconnection arbitration disputes.[7]

In its initial Evaluation, the Texas Commission noted that one million Texas phone lines in SWBT's service area were then being served by CLECs. As SWBT states in its supplemental filing, that number has grown since January. One cannot turn on the television or the radio or open a newspaper in Texas without seeing CLEC promotions for business customers. In the last month, several large carriers, including Sprint, AT&T, and MCIWorldcom, have begun to ramp up their statewide efforts to service all customers in the Texas market. That was not true six months ago. These developments are dramatic evidence that competition is here and it is here to stay.

[4] P.U.C. PROC. R. 22.303 ("Any party negotiating a request for interconnection, services or network elements under FTA96 § 251 may request, in writing, that the commission assist the parties by mediating any differences that have arisen in the negotiations.")
[5] P.U.C. PROC. R. 22.321.
[6] P.U.C. PROC. R. 22.327 (a hearing shall be held within 20 days of the filing of the complaint to the extent the Arbitrator decides that the complaint warrants such treatment).
[7] P.U.C. PROC. R. 22.328.

II. OPERATIONS SUPPORT SYSTEMS

Checklist item two requires that a BOC show it has provided nondiscriminatory access to network elements in accordance with the requirements of Section 251(c)(3) and 252(d)(1) of the FTA.[8] Included among the network elements is the BOC's operations support systems (OSS).[9] In its first evaluation, the Texas Commission concluded that SWBT had met its OSS obligations under section 271 by providing nondiscriminatory access. Our review included, in addition to carrier-to-carrier testing, a lengthy collaborative process between the Texas Commission, SWBT and the CLEC community. However, some commenters continue to express concerns about SWBT's provision of nondiscriminatory access to OSS. Therefore, the Texas Commission has reexamined the record evidence, analyzed SWBT's supplemental filing, reviewed further performance measurement data, conducted a workshop attended by SWBT and a broad range of Texas CLECs, and engaged a third party to conduct a review of the pre-order and order integration process. Based upon the foregoing, the Texas Commission concludes that SWBT provides nondiscriminatory access to its OSS, including the integration of pre-order and order functions.

A. Integration

CLEC integration of pre-order functions with ordering can be accomplished via the following application-to-application interfaces: EDI/DataGate and EDI/CORBA. When integrated, these application-to-application interfaces allow the CLEC to gather pre-order data with which the CLEC can populate the local service request (LSR) form fields--without having to manually enter the data--and electronically transfer Customer Service Record data fields to its back-end systems, such as billing.

To integrate the application-to-application interfaces, the CLEC must build out its own back-end systems. EDI/CORBA is designed according to industry standards and the documentation necessary for CLECs to construct their systems are the Service Order Sub-Committee (SOSC) Mapping Matrix and the Interface Definition Language. These documents are readily available on the SOSC and T1/M1 websites. EDI/DataGate is a SWBT provided proprietary pre-order interface constructed prior to the development of the industry standard EDI/CORBA interface. EDI/DataGate can be integrated as well and the appropriate documentation is provided by SWBT in the Client/Service User Guide and the LSP Access (or DataGate) Developer Reference Guide.[10] SWBT has stated that all of this documentation is readily available to CLECs. Further, SWBT has

[8] 47 U.S.C. § 271(c)(2)(B)(ii).
[9] *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan,* CC Docket No. 97-137, 12 FCC Rcd 20543, 20615, para. 133 (1997).
[10] Supplemental Affidavit of Elizabeth A. Ham, Supplemental Application of Southwestern Bell Telephone Company, App., Vol. B, Tab 1 at paras. 8-9 (hereinafter "Ham Aff.").

stated that they are ready and willing with the appropriate staff resources to assist the CLECs with integration.[11]

To further assist CLECs with integration, SWBT has entered into an agreement with General Electric Global Exchange Services (GE) to provide assistance to requesting CLECs at SWBT's expense.[12] The services include a two-week consulting engagement wherein GE will assess the CLEC's situation, make recommendations relating to interface architecture and strategy, offer high-level requirements and issue a report to the CLEC. CLECs have already expressed interest in GE's assistance.[13] In addition to assistance by GE, SWBT will offer workshops, beginning June 21, 2000, to assist CLECs with integration issues.[14]

Successful integration is the obvious goal and two carriers have attested to their ability to successfully integrate.[15] On behalf of Sage Telecom, Gary P. Nuttall, Vice President - Operations, filed with this Commission an *ex parte* letter dated March 29, 2000, stating "I am writing to verify that Sage has been able to integrate information between SBC's pre-ordering and ordering interfaces."[16] Further, Louis F. McAlister, President and CEO of Navigator Telecommunications, expressed in his March 30, 2000, *ex parte* letter, "Navigator is able to take information contained in the Customer Service Record (CSR) obtained from SBC's Datagate pre-ordering interface, and electronically complete a Local Service Request (LSR) that could be submitted to SBC through its EDI ordering interface, as well as populate our own internal systems with minimal human intervention."[17] These declarations provide evidence of successful commercial integration and nondiscriminatory access to SWBT's OSS. Although other carriers have not stepped forward to admit successful integration, the reject rates and order volumes discussed below provide evidence that has allowed the Texas Commission to conclude other carriers have achieved successful integration.

To further develop the record with regard to integration, on April 17, 2000, the Texas Commission conducted a workshop on this issue. Two CLECs stated that they had successfully integrated some of the pre-order information.[18] Specifically, MCI stated that it has integrated several fields, one such being account telephone number.[19] In *Bell Atlantic New York*, this Commission concluded that successful commercial integration of two pre-order functions is probative evidence that carriers are capable of integrating the

[11] *Id.* at paras. 10-11.
[12] *Id.* at para. 15.
[13] *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUCT Project No. 20400, Workshop Transcript (April 17, 2000) at 25 (attached hereto as Exhibit 4).
[14] Ham Aff. at para. 16.
[15] Both of the *ex parte* letters raise issues relating to address validation. SWBT has committed to changing the LSR process as of May 27, 2000, which should resolve these issues. *See* discussion *infra*.
[16] Ham Aff., Attach. A (Sage March 2000 *Ex Parte* Letter).
[17] Ham Aff., Attach. B (Navigator March 2000 *Ex Parte* Letter).
[18] Exhibit 4 at 25, 27-28, 84.
[19] *Id.*

remaining pre-order functions.[20] Further, the Commission refused to acknowledge that full integration is only possible if all of the field names and formats are completely uniform.[21] Thus, the evidence in the record, combined with the declarations of Sage and Navigator described above, provide the evidence necessary to conclude that CLECs can successfully integrate their interfaces with SWBT's OSS.

In addition to the evidence discussed above, the Texas Commission requested that Telcordia review the documentation and specifications provided to CLECs desiring to integrate their pre-order and order functions with SWBT's OSS.[22] In its report, Telcordia concludes the documentation and technical assistance available to CLECs is sufficient for the CLEC to build out its system and successfully integrate with SWBT's OSS. To arrive at this conclusion, Telcordia used the available documentation to develop a Pre-order/Order process simulator. Using this simulator, Telcordia was able to query and store pre-order information from SWBT and then use that information in the ordering process. Although Telcordia recommends three pieces of additional information be made available to CLECs, the overall conclusion was that the documentation is adequate for successful integration.

B. Reject Rates

The Texas Commission believes that decreasing reject rates are characteristic of successful integration. Among the performance data SWBT collects each month as a part of its Performance Remedy Plan is PM 9, percent rejects. SWBT's OSS is designed to reject an LSR after it is electronically submitted, if it contains a fatal reject detected by LASR's up-front edits. PM 9 captures the percent of mechanized rejects for mechanized orders. The data is disaggregated by EDI and LEX.[23] As shown below, the number of rejects under PM 9 has decreased since November of 1999. This decrease is illustrated in the following graph comprised of all CLECs using EDI:[24]

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[20] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York,* CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, at para. 138 (Dec. 1999) (hereinafter "*Bell Atlantic New York*").

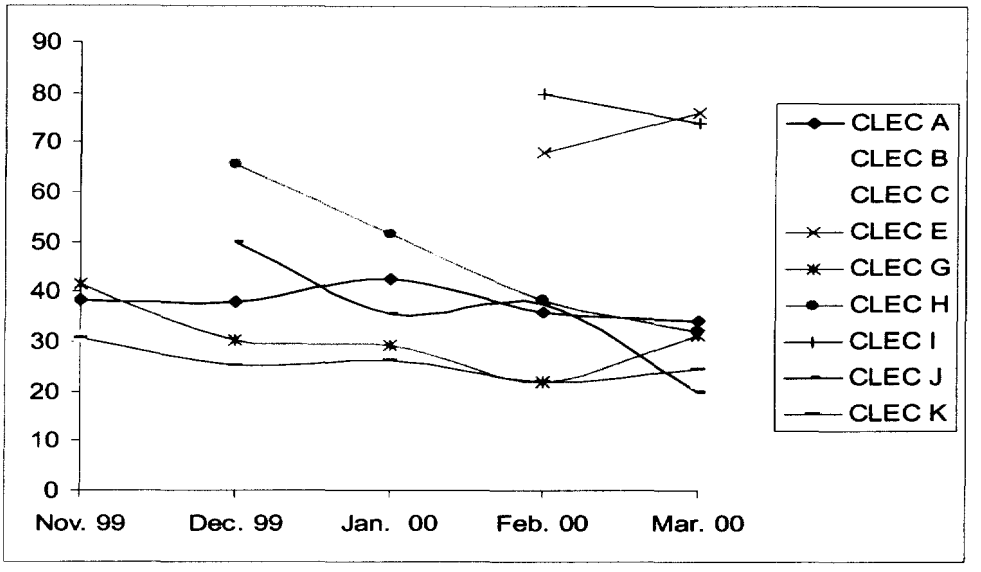
[21] *Id.* at para. 139.

[22] *Operations Support Testing Relating to the Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market in Texas*, PUCT Project No. 20000, Supplemental OSS Readiness Report: Pre-order/Order Integration Analysis (April 24, 2000) (attached hereto as Exhibit 5).

[23] EDI is the interface SWBT is relying upon to satisfy its 271 obligations. Therefore, we will examine performance measurement data as it relates to EDI.

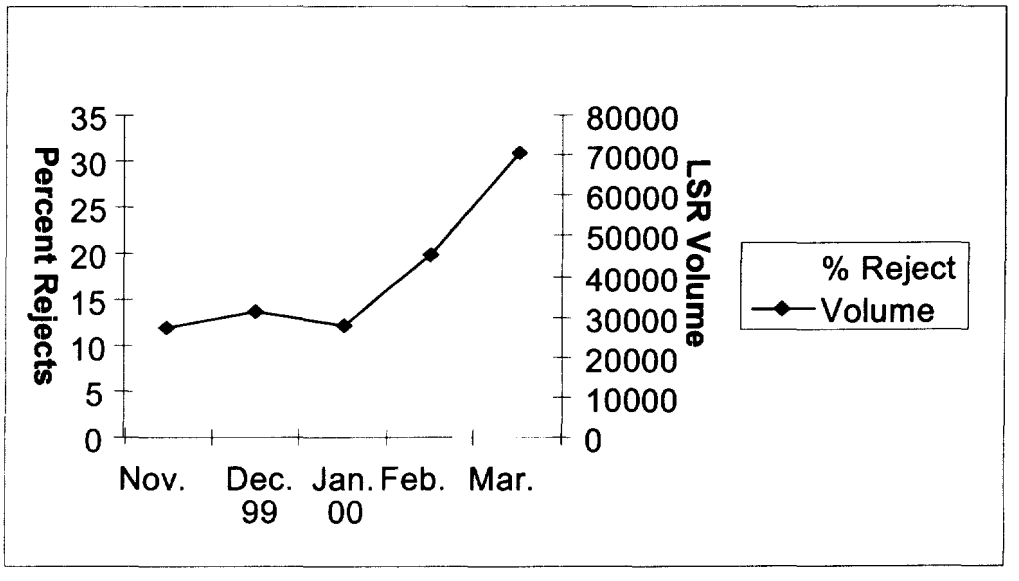
[24] *See* Ham Aff., Attach. K; Letter from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 (April 25, 2000) (hereinafter "SWBT April 25, 2000 *Ex Parte* Letter"). Only CLECs with statistically significant monthly volumes for two or more months of LSRs were included in the graph.

PM 9 Percent Mechanized Rejects
(Data is Disaggregated by CLEC)



The graph also illustrates the widely disparate reject rates for various CLECs and indicates that as CLECs become more familiar with EDI, their reject rates decrease. On an aggregate basis, 30.7 percent of LSRs were rejected in November of 1999. By contrast, only 22.1 percent of orders were rejected in February 2000, even though volume jumped from 27,312 LSRs in November to 45,404 LSRs in February. Although the aggregated reject rate increased slightly in March, LSR volume rose substantially to 70,794 LSRs, as illustrated on the following graph:

PM 9 Percent Mechanized Rejects
(Data is Aggregated for all CLECs using EDI)



Reject rates for individual CLECs are also steadily declining while volume is increasing. The Texas Commission notes that according to data submitted by SWBT, CLEC C's reject rates were 31.2% in November at a volume of 18,480 LSRs.[25] In March, volume rose to 44,153 LSRs, while the reject rate fell to 21.9%.[26] Similarly, CLEC I's reject rates dropped from 23.9% in November to 19.6% in March while its volume increased from 5,731 LSRs to 15,307 LSRs.[27] The Texas Commission believes that successful integration accounts for the decreased rates.

During the workshop conducted by the Texas Commission, some CLECs argued that reject rates were falling only because SWBT changed its process and now sends what were formerly considered rejects as jeopardies. As explained in the workshop, in mid-January, SWBT, at the request of the CLECs, discontinued its process of rejecting an order after sending a firm order commitment (FOC).[28] Instead, if an error is detected after a FOC has been sent, such as for lack of facilities, the order is not rejected; instead a jeopardy notice is sent. Although there is no specific performance measurement to capture jeopardies, many are captured in performance measurements currently in place (e.g., missed due dates). Furthermore, the data provided by SWBT shows that jeopardies occur on a very small number of LSRs, and the number of jeopardies is decreasing.[29] The Texas Commission concludes that the effect of the process change on overall reject rates is minimal. Therefore, it does not affect the ability of a CLEC to successfully integrate its interfaces and does not detract from SWBT's overall performance.

Also during the workshop, there was an extensive discussion of parsing. Parsing is an element of the pre-order and order process whereby CLECs can populate an LSR from the CSR. SWBT stated that the address information is parsed in EDI/CORBA as part of the Address Validation function.[30] Additionally, by June 2001, SWBT intends to implement upgrades to EDI/CORBA that will provide parsed address information in the CSR function.[31] When the upgrade is fully implemented, all fields in the pre-order information in EDI/CORBA will be parsed.

In EDI/DataGate the address information is not parsed, the data is concatenated; therefore, a CLEC must develop a program routine at its back-end system to parse the data in its ordering system to electronically populate the appropriate fields in the LSR. In the proprietary EDI/DataGate order interface, some of the information related to CSRs are in data strings separated by comma or space delimiters.[32] The CLECs may parse such data by installing program routines in their back-end systems to populate to their internal databases, such as billing. CLECs also have the option of copying and pasting if the pre-

[25] Ham Aff., Attach. K at 1.
[26] SWBT April 25, 2000 *Ex Parte* Letter.
[27] Ham Aff., Attach. K at 1; SWBT April 25, 2000 *Ex Parte* Letter.
[28] Exhibit 4 at 105-09.
[29] *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company*, PUCT Project No. 20400, Comments of Southwestern Bell Telephone Company (April 19, 2000) at 4-5.
[30] Ham Aff. at para. 17; Exhibit 4 at 12.
[31] Exhibit 4 at 89-90
[32] *Id.* at 11-12.

order response is sent through one of the Graphical User Interfaces (GUI), LEX or Verigate.[33] The CLECs have expressed that the most troubling field is the service address field and as discussed below, SWBT has proposed a process change to address their concerns.[34]

To further decrease the reject rates for CLEC orders, SWBT has agreed to initiate a change in the pre-order system. As of May 27, 2000, CLECs will no longer have to populate the End User Service Address field on the LSR for conversion orders.[35] This change is expected to relieve the greatest number of address errors for CLECs.[36] SWBT attributes approximately 89% of address rejects during the month of January to errors in populating the End User Service Address field alone.[37] Therefore, once this change is in place, the average reject rate could conceivably drop by approximately 4.2%.[38] This service address change has been presented to the CLECs through an Accessible Letter and discussed in the change management process. All of the CLECs have agreed to the process change.[39]

On the whole, the performance measurement data SWBT collects with regard to order rejects indicates an improved rate that exceeds the standards set in *Bell Atlantic New York*. Further, a decrease in reject rates indicates CLECs are becoming more proficient and are fully integrating their pre-order and order functions. SWBT's commitment to change the pre-order system to omit population of the End User Service Address field by the CLEC should significantly reduce the already decreasing reject rate.

C. Conclusion

SWBT has provided evidence of successful commercial integration as well as an independent third party analysis that the interfaces are integratable. Therefore, the Texas Commission concludes that SWBT fully satisfies the requirements set for in the FTA, § 271(c)(2)(B)(ii).

[33] Ham Aff. at para. 17; Exhibit 4 at 13-14.
[34] Exhibit 4 at 27, 29, 48-49.
[35] The End User Service Address will continue to be required for new orders. Ham Aff. at para. 24.
[36] AT&T estimated that approximately 90% of their orders are conversion orders. Exhibit 4 at 49-50.
[37] Ham Aff. at para. 26.
[38] *Id.* These percentages vary among CLECs.
[39] Exhibit 4 at 17.

III. UNBUNDLED LOOP CONVERSION

Since SWBT's initial filing in January, several commenters, including DOJ, have raised concerns regarding SWBT's ability to provision unbundled loops through the use of coordinated conversions, a process known as "hot cuts." Section 271©(2)(B)(iv) of the Federal Telecommunications Act, item 4 of the competitive checklist, requires that SWBT provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[40]

As the FCC stated in *Bell Atlantic New York*, because there is no retail equivalent to a hot cut, SWBT must demonstrate that it provides unbundled loops through hot cuts "in a manner that offers an efficient competitor a meaningful opportunity to compete."[41] Thus, the FCC looks to performance data measuring whether CLECs are informed of the status of their order and how responsive the BOC is in providing access to necessary support functions, including maintenance and repair.[42] In *Bell Atlantic New York*, the FCC pointed to the following three specific categories of hot cut performance to make its determination that Bell Atlantic had met the requirements of the Act: (1) on-time cut-over performance at rates at or above 90%; (2) BOC-caused service outages of 5% or less; and (3) installation trouble reports on hot cut loops of less than 2% within 7 days.[43]

In its recommendation to the FCC, DOJ stated that SWBT's hot cut performance was not as good as Bell Atlantic's "minimally acceptable" performance in New York, and so constrained CLECs in their ability to enter the Texas market using UNE loops. The Texas Commission-approved hot cut measures use lines or loops as a unit of measure rather than orders, while the measures analyzed in *Bell Atlantic New York* use orders. In its March 20, 2000 *ex parte* filing, DOJ stated that SWBT's use of loops likely overstated SWBT's performance.[44] The DOJ further expressed concern that the hot cut data submitted by SWBT in the March 2, 2000 *ex parte* had not been reconciled by the parties. DOJ also stated that SWBT failed to measure a portion of the relevant time period in its data with no explanation or justification.[45] DOJ was further troubled by the lack of evidence in the record sufficient to establish the efficacy of the frame due time (FDT) process, which is an alternate method of unbundled loop conversion. AT&T, the smost vocal critic of SWBT's hotcut performance, argued that SWBT's data is unreliable and still omits performance data on outages due to defective loop cuts. Moreover, AT&T argued that SWBT's data, even if reliable, fails to meet the *Bell Atlantic New York* standard or the Texas Commission benchmark.

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[40] 47 U.S.C. § 271 (c)(2)(B)(iv).
[41] *Bell Atlantic New York* at para. 291
[42] *Id.* at para. 270.
[43] *Id.* at para. 309
[44] Letter from Department of Justice to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 (March 20, 2000) at 9 (hereinafter "DOJ March 20, 2000 *Ex Parte* Letter").
[45] *Id.*

Because of the concerns articulated by the commenters, the Texas Commission has taken the following additional steps to resolve any potential outstanding unbundled loop conversion issues: On March 28, 2000, the Texas Commission issued an Order Requiring Reconciliation of Performance Measure Data. Pursuant to the Order, SWBT was required to provide underlying data on PMs 114, 114.1 and 115 for December 1999 through February 2000 for all unbundled loop conversions. The Order stated, "[t]o the extent that individual CLECs believe that the performance data reported by SWBT does not reflect actual performance, such CLECs shall work with SWBT to reconcile the data...on or before April 14, 2000." Pursuant to that order, several CLECs reconciled unbundled loop conversion data. The reconciled data is discussed below. The Texas Commission also held workshops on April 12, 14 and 17 to address reconcilation issues, as well as to conduct the six-month review of unbundled loop conversion performance measures, including revision of existing measures and/or adoption of new measures or benchmarks for frame due time. Finally, the Texas Commission reviewed performance measurement data for December through March.

Before discussing the reconciled data, the Texas Commission notes that PMs 114, 114.1, and 115 were established to track performance related to unbundled loop conversions. PMs 114 and 115 were adopted in late 1998, and PM 114.1, which measures the duration of the cutover, was discussed and developed in November and December and approved at the December 16, 1999 open meeting. The Texas Commission chose to use loops rather than orders because of its belief that loops more accurately reflect customers' dissatisfaction when their service is provisioned poorly (i.e. customers will likely be more upset if they suffer an outage of 9 lines out of a 10 line order versus 1 line out of 10 lines) and in light of the fact that the Section 271 checklist requires provision of unbundled loops. Because the FCC has not adopted national standards for adequate "hot cut" performance, the Texas Commission believes that deference should be given to the standards developed by the Texas Commission after working with SWBT and CLECs over a two year period. Moreover, SWBT has indicated that it cannot track performance data for all the performance measurements in terms of orders without manual manipulation and all parties believe that a mechanized system is most efficient.[46] Although AT&T does not agree that the same benchmarks should apply to both loops and orders, in the six-month review process underway at the Texas Commission to review current performance measurements, AT&T agreed that the performance data should be tracked by lines rather than orders on a going forward basis to allow for a mechanized system that uses similar units for all the performance measurements.[47]

As a result, the performance measures implemented by the Texas Commission capture somewhat different performance data than those established by the New York Commission. That difference is less important than whether the performance measures implemented by the Texas Commission provide adequate information to determine if

[46] *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUCT Project No. 20400, Workshop Transcript (April 12, 2000) at 37, 71 (attached hereto as Exhibit 1). *See also* Exhibit 4 at 211

[47] Exhibit 4 at 211.

SWBT's performance gives CLECs a meaningful opportunity to compete. The Texas Commission believes that they do. The Texas Commission is considering changes to the current performance measurements in its six-month review process, including appropriate changes or additions for frame due time. If that review indicates that these (or any other measures) need revision, changes will be considered. But in the meantime, for this evaluation, the Texas Commission is reviewing SWBT's performance under both the Texas Commission's current performance measurements and the *Bell Atlantic New York* measurements, where applicable.

Based upon the data filed in SWBT's initial application, the data provided by SWBT in its March 2, 2000 *ex parte,* April 5, 2000 Supplemental Filing, April 21, 2000 and April 25 *ex partes* and the discussions and data reconciliation that have taken place among the parties since SWBT's initial filing, the Texas Commission continues to believe that SWBT demonstrates that it provisions hot cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption, thereby offering competitors a meaningful opportunity to compete in the local exchange market.

A. The Texas Unbundled Loop Conversion Measures

Absent a retail analog for coordinated hot cuts, the Texas Commission established performance measures 114, 114.1 and 115 to determine if SWBT performed unbundled loop conversions in a manner that provided CLECs with a meaningful opportunity to compete. PM 114 measures the percentage of unbundled loop conversions where SWBT prematurely disconnects the customer prior to the scheduled conversion. The Texas Commission's benchmark for this measure is less than 2% premature disconnects within 10 minutes of the scheduled start time. PM 114.1, established in December 1999, measures the coordinated cut over interval on orders for 1-24 loops. Under the Texas Commission's interim benchmark, 100% of these cutovers are to be completed within 2 hours of the scheduled start time. PM 115 measures the percentage of SWBT-caused delayed coordinated cutovers. Under the Texas Commission's benchmark, no more than 8% of coordinated cutovers are to be delayed more than 30 minutes, 2% more than one hour, and 1% beyond 2 hours from the scheduled start time. As discussed above, because the metrics are different than the *Bell Atlantic New York* metrics, comparisons can be difficult.

In its Reply Brief and *ex parte* filing of March 2, 2000, SWBT provided unreconciled performance data for months through January 2000, which covered both CHC and the alternative process, FDT.[48] Since that time, SWBT has provided performance measure data for months through March 2000 for the two processes.[49]

[48] Letter from Paul K. Mancini to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4 (April 5, 2000) at 6 (hereinafter "SWBT April 5, 2000 *Ex Parte* Letter").

[49] Supplemental Joint Affidavit of Candy R. Conway and William R. Dysart, Supplemental Application of Southwestern Bell Telephone Company, App., Vol. C at paras. 9, 13, 20 (hereinafter "Conway/Dysart Aff."); Letter from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 (April 21, 2000) Attach. 1 at 10 (hereinafter "SWBT April 21, 2000 *ExParte* Letter").

Although SWBT has filed data for the FDT process—and in most instances SWBT's FDT performance does meet the Texas Commission's CHC benchmarks and the standards that the FCC articulated in *Bell Atlantic New York*—the Texas Commission will primarily focus its evaluation on the CHC data for the following reasons. First, the Texas Commission believes that SWBT's performance on CHC is more indicative of its long-term performance in view of the fact that the CHC process has been in effect for a long period of time; FDT by contrast is a new process—neither SWBT nor the CLECs have the breadth of experience with the process to allow the Texas Commission to predict that the results obtained now are indicative of long term performance. Second, the Texas Commission developed the CHC measures at a time when the FDT process did not even exist; although SWBT agreed to disaggregate the current data to allow CLECs and the Texas Commission to track its performance on FDT, the Texas Commission is not convinced that the exact same measures and benchmarks should be used for both processes. Nor is the Texas Commission convinced that the cutover time should be measured at 30 minutes, as advocated by AT&T and as captured in the Provisioning Process Improvement Group (PPIG) process. Third, Bell Atlantic did not have an FDT process in place at the time of its application so the FCC did not evaluate FDT data. Fourth, SWBT has taken the initiative to develop an alternative method for CLECs to provision hot cuts. Although the Texas Commission recognizes the importance of having reliable provisioning of hot cuts regardless of the method used, the Texas Commission does not believe SWBT's 271 application should succeed or fail based on its FDT performance. Doing so will discourage other RBOCs from developing new systems or processes, even if such systems or processes may ultimately be more efficient, just before or during the pendancy of their 271 applications.

B. Performance and Outage Data on Coordinated Hot Cuts

PM 114.1 measures the coordinated cutover interval on orders of 1-24 loops. As discussed above, to address the data reliability issue raised by commenters, the Texas Commission required SWBT to provide CLECs with their raw data to be reconciled with SWBT's data.[50] In spite of the opportunity to reconcile the data, only a few CLECs did so. Because most CLECs did not reconcile the performance measure data and therefore the reconciled sample is much smaller than the original population of data, the Texas Commission includes two charts below. The first chart is comprised of only the data reconciled by SWBT and the CLECs that chose to reconcile. Because the Commission invited CLECs who believed the performance data reported by SWBT to be inaccurate to reconcile with SWBT, the second chart includes the original reported data for those CLECs that did not reconcile plus the reconciled data for those CLECs that did reconcile. As shown in the charts below, the performance measurement data for December, January and February indicates that approximately 96% of CHC conversions were completed within the Texas Commission's two-hour benchmark in both groups. As pointed out by SWBT, SWBT does not meet the Texas Commission interim benchmark—100 percent within two-hours—with absolute perfection, although SWBT comes very close, 99.2%,

[50] *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUCT Project No. 20400, Order No. 4 (March 28, 2000).

in the "all CLEC" data for February.[51] However, this is an interim benchmark and the Texas Commission is currently considering suggested changes by various parties regarding this benchmark. The Texas Commission notes that SWBT is nonetheless obligated to pay damages under PM 114.1 based on the number of lines missed.

PM 114.1 CHC "Reconciled CLEC" Data
Results for Orders Containing 1-24 Lines[52]

	Total Number of Lines	Cuts within 2 Hours
December'99	XXX	XXX (95.2%)
January'00	XXX	XXX (98.2%)
February'00	XXX	XXX (95.4%)
Three Months Combined	XXX	XXX (96%)

PM 114.1 CHC "All CLEC" Data: Reconciled Plus Reported
Results for Orders Containing 1-24 Lines[53]

	Total Number of Lines	Cuts within 2 Hours
December'99	2127	1994 (93.8%)
January'00	1094	1045 (95.5%)
February'00	1890	1875 (99.2%)
Three Months Combined	5111	4914 (96.2%)

The Texas Commission notes that, in the chart above containing "all CLEC" data, SWBT's performance improved every month, with a high of 99.2% in February.

Further, as shown in the charts below, 90% of the reconciled CHC conversions were completed within the *Bell Atlantic New York* one-hour time frame for fewer than 10 loops for the months December through February. The first chart is comprised of only the data reconciled by SWBT and the CLECs that chose to reconcile, while the second chart includes the original reported data for those CLECs that did not reconcile plus the reconciled data for those CLECs that did reconcile.

[51] Conway/Dysart Aff. at para. 15.
[52] SWBT April 25, 2000 *Ex Parte* Letter.
[53] *Id.*

PM 114.1 CHC "Reconciled CLEC" Data
Results for Orders Containing 1-10 Lines

	Total Number of Lines	Cuts within 1 Hour
December'99	XXX	XXX (86.3%)
January'00	XXX	XXX (97.5%)
February'00	XXX	XXX (91.4%)
Three Months Combined	XXX	XXX (90.5%)

PM 114.1 CHC "All CLEC" Data: Reconciled plus Reported
Results for Orders Containing 1-10 Lines

	Total Number of Lines	Cuts within 1 Hour
December'99	1750	1513 (86.5%)
January'00	1044	911 (87.3%)
February'00	1563	1494 (95.6%)
Three Months Combined	4357	3918 (89.9%)

The Texas Commission again notes that, in the chart above containing "all CLEC" data, SWBT's performance improved every month, with a high of 95.6% in February.

As stated by SWBT, the PPIG was formed to address operational issues and to collaborate on reconciliation of data on unscheduled service interruptions, which occur during the provisioning process.[54] The current performance measurements do not capture all outage data. This problem is being resolved in the six-month review process and will result in a measure to accurately capture all outage data. The proposed new PM 115 will measure the percent of CHC/FDT circuits for which the CLEC submits a trouble report on or before noon on the next business day after conversion. All the parties agree that this new measure captures the outages that result from defective loops.[55]

[54] Conway/Dysart Aff. at para.25.
[55] Exhibit 4 at 210-11.

The PPIG outage data is more difficult to analyze than the performance measure data because the parameters are not as well defined. As indicated earlier, the Texas Commission has not approved a measurement to capture the total period of outage, although one was considered in the recent six-month review and will be considered within the next month by the Texas Commission. Because SWBT and AT&T have reconciled the underlying data, however, all interested parties are given the opportunity to review the data and draw relevant conclusions from that data. Texas Commission staff asked SWBT to provide outage data that would not overlap with the data or misses included in PMs 114, 114.1 and 115. The following chart, therefore, does not contain outages that result from premature disconnects; those outages are captured in PM 114. The following chart also does not contain outages that occurred within the first sixty minutes of the cut. In other words, for purposes of PM 114.1, the cut begins when the CLEC calls SWBT to begin the coordinated cutover. Because the time allowed for the cutover is sixty minutes under the *Bell Atlantic New York* analysis, the Texas Commission believes any outages occurring during that period are accounted for through the provisioning interval. On the other hand, if the outage continues past sixty minutes, it is included in the percentages appearing in the following table. Following this analysis, according to SWBT and AT&T's reconciled data for the months of December, January and February, AT&T experienced outages of 1.68%.

AT&T/SWBT Reconciled PPIG Outages

	December	January	February	Combined
CHC	0.71%	0.00%	3.37%	1.68%

SWBT's performance on outages is well within acceptable limits according to the five percent standard established in *Bell Atlantic New York.* AT&T asserts that premature disconnects must be part of any outage analysis. PM 114 measures conversions where SWBT prematurely disconnects the customer prior to the scheduled conversion. SWBT is meeting or exceeding the Texas Commission benchmark; February results are the exception. The following results show that there was a substantial increase in premature disconnects in February:

PM 114 CHC "All CLEC" Data: Reconciled plus Reported Results for Orders Containing 1-10 Lines

	Total Number of Lines	Premature Disconnects
December'99	1750	6 (0.34%)
January'00	1044	19 (1.82%)
February'00	1563	169 (10.81%)
Three Months Combined	4357	194 (4.45%)

However, SWBT has indicated that this performance measurement was impacted by the Service Order Analysis and Control (SOAC) software defect that has since been corrected.[56] Based on preliminary March data for PM 114, which shows the percentage of CHC premature disconnects at .75%, the Texas Commission believes that this problem has been rectified and will not affect SWBT's future performance.[57] The Texas Commission, therefore, finds that SWBT meets the *Bell Atlantic New York* standard, even considering the outage data together with the premature disconnect data captured in PM 114.

PM 115 measures the percentage of SWBT caused delayed coordinated cutovers. SWBT is meeting or exceeding the Texas Commission benchmark for this measure.

In *Bell Atlantic New York*, the FCC found that Bell Atlantic had installation trouble reports on hot cut loops of less than 2% within 7 days.[58] SWBT's performance in Texas on troubles after installation is measured by PM 59. PM 59 measures the percentage of Installation Reports (Trouble Reports) within 30 days (I-30) of installation. SWBT's data for PM 59 is not disaggregated into FDT and CHC. To assist the FCC in making a better comparison to Bell Atlantic's performance, SWBT broke down the data for January, February, and March's I-30 report manually on conversions within 10 days of installation.[59] For January, February, and March, as illustrated on the following chart, SWBT's data shows that SWBT's performance for CHC was 1.7% within 10 days:

[56] Conway/Dysart Aff. at paras. 29-34.
[57] SWBT April 21, 2000 *Ex Parte* Letter, Attach. 1 at 10.
[58] *Bell Atlantic New York* at para. 309
[59] Conway/Dysart Aff. at para.19.

CHC 1-10 Trouble Reports

	Total Number of Loops	Percent 1-10 Reports
January'00	1349	27 (2.00%)
February'00	1896	33 (1.74%)
March	1998	29 (1.45%)
Three Months Combined	5243	89 (1.7%)

Because SWBT's data captures three additional days in which trouble reports could be filed, the Texas Commission believes that SWBT's performance is better than the performance required by the FCC in *Bell Atlantic New York.*

C. Performance and Outage Data on Frame Due Time

SWBT offers CLECs two methods for unbundled loop conversion: CHC and FDT. As discussed above, the Texas Commission finds that SWBT's long term performance on the unbundled loop conversion process is more accurately represented by a review of CHC. However, in the interest of completeness, the Texas Commission has also evaluated SWBT's performance on the provisioning of FDT.

PM 114.1 measures the coordinated cutover interval on orders of 1-24 loops.[60] As with the CHC data, the Texas Commission provided all CLECs with the opportunity to reconcile this data and only a few chose to do so. Because most CLECs did not reconcile the performance measure data and therefore the reconciled sample is much smaller than the original population of data, the Texas Commission includes two charts below. The first chart is comprised of only the data reconciled by SWBT and the CLECs that chose to reconcile. As with the CHC data above, the second chart includes the original reported data for those CLECs that did not reconcile plus the reconciled data for those CLECs that did reconcile. As shown in both charts below, the performance measurement data for December, January and February indicates that 94.2% of FDT conversions were completed within the Texas Commission's two-hour benchmark.

[60] *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUCT Project No. 20400, Order No. 4 (March 28, 2000).

PM 114.1 FDT "Reconciled CLEC" Data
Results for Orders Containing 1-24 Lines

	Total Number of Lines	Cuts within 2 Hours
December'99	XXX	XXX (90.6%)
January'00	XXX	XXX (93.9%)
February'00	XXX	XXX (96.6%)
Three Months Combined	XXX	XXX (94.2%)

PM 114.1 FDT "All CLEC" Data: Reconciled plus Reported
Results for Orders Containing 1-24 Lines

	Total Number of Lines	Cuts within 2 Hours
December'99	2096	2004 (95.6%)
January'00	1311	1240 (94.6%)
February'00	2296	2128 (92.7%)
Three Months Combined	5703	5372 (94.2%)

Further, as shown in the charts below, approximately 94% (94.2% in first chart and 93.5% in second chart) of the reconciled FDT conversions were completed within the *Bell Atlantic New York* one-hour time frame for fewer than 10 loops for the months December through February. The first chart is comprised of only the data reconciled by SWBT and the CLECs that chose to reconcile, while the second chart includes the original reported data for those CLECs that did not reconcile plus the reconciled data for those CLECs that did reconcile.

PM 114.1 FDT "Reconciled CLEC" Data
Results for Orders Containing 1-10 Lines

	Total Number of Lines	Cuts within 1 Hour
December'99	XXX	XXX (89.6%)
January'00	XXX	XXX (93.9%)
February'00	XXX	XXX (96.6%)
Three Months Combined	XXX	XXX (94.1%)

PM 114.1 FDT "All CLEC" Data: Reconciled plus Reported
Results for Orders Containing 1-10 Lines

	Total Number of Lines	Cuts within 1 Hour
December'99	1918	1795 (93.6)
January'00	1262	1183 (93.7%)
February'00	2140	1996 (93.3%)
Three Months Combined	5320	4974 (93.5%)

SWBT experienced problems with outages in the area of FDT orders. As with the CHC outage data discussed above, Texas Commission staff asked SWBT to provide a chart that included outage data that would not overlap with the data or misses included in PMs 114, 114.1 and 115. The following chart, therefore, contains the same parameters as that set forth in the CHC discussion above. According to SWBT and AT&T's reconciled data for the months of December, January and February, SWBT's percent of orders that experienced unexpected service outage during conversion using the FDT process for these months is 14.25%. Although the outage rate was very high for January, the Texas Commission notes that it dropped over 10% in February, a very encouraging trend and closer to *Bell Atlantic New York* 5 percent rate.

AT&T/SWBT Reconciled Outages

	December	January	February	Combined
FDT	12.95%	19.35%	8.7%	14.25%

AT&T asserts that premature disconnects must be part of any outage analysis. PM 114 measures conversions where SWBT prematurely disconnects the customer prior to the scheduled conversion. SWBT is meeting or exceeding the Texas Commission benchmark; February results are the exception. The following results show that there was a substantial increase in premature disconnects in February:

PM 114 FDT "All CLEC" Data: Reconciled plus Reported Results for Orders Containing 1-10 Lines

	Total Number of Lines	Premature Disconnects
December'99	1918	2 (0.1%)
January'00	1262	16 (1.27%)
February'00	2140	103 (4.81%)
Three Months Combined	5320	121 (2.27%)

SWBT has indicated that this performance measurement was also impacted by the SOAC software defect that has since been corrected.[61] Based on preliminary March data for PM 114, which shows the percentage of CHC premature disconnects at 1.42%, the Texas Commission believes that this problem has been rectified and will not affect SWBT's future performance.[62]

PM 59 measures the percentage of Installation Reports (Trouble Reports) within 30 days (I-30) of installation. As with the data for the CHC process, SWBT broke down the data for January, February and March's I-30 report manually on conversions within 10 days of installation.[63] For January, February, and March, as illustrated on the following chart, SWBT's data shows that SWBT's performance for FDT was 2.45% within 10 days:

[61] Conway/Dysart Aff. at paras. 29-34.
[62] SWBT April 21, 2000 *Ex Parte* Letter, Attach. 1 at 10.
[63] Conway/Dysart Aff. at para.19.

FDT 1-10 Trouble Reports

	Total Number of Loops	Percent 1-10 Reports
January'00	1293	26 (2.01%)
February'00	2258	74 (3.28%)
March	2119	39 (1.84%)
Three Months Combined	5670	139 (2.45%)

Because SWBT's data captures three additional days in which trouble reports could be filed, the Texas Commission believes that SWBT's performance is within the range of performance required by the FCC in *Bell Atlantic New York*. In addition, SWBT states that the software defect impacted the FDT data for February. Further, March data indicates that SWBT's performance was 1.84%, which shows a downward trend.

D. Conclusion

Regarding the provisioning or unbundled loops, SWBT has demonstrated that it meets the Texas Commission's benchmarks as well as the *Bell Atlantic New York* standards in most instances. SWBT completes more than 90% of all CHC conversions timely, SWBT's outage rate is less than 5%, and less than 2% of SWBT's hot cut lines have reported installation troubles. Based on the record in its entirety, the Texas Commission continues to believe that SWBT demonstrates that it provisions hot cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption, thereby offering competitors a meaningful opportunity to compete in the local exchange market.

IV. ACCESS TO xDSL LOOPS

In its first evaluation and in reply comments, the Texas Commission concluded that SWBT had met its obligations under Section 271 by providing nondiscriminatory access to xDSL capable loops. In addition to a lengthy collaborative process between the Texas Commission, SWBT and the CLEC community, the Texas Commission's review included data reconciliation of xDSL loop orders and culminated with ordered process improvements.[64] However, several commenters raised concerns regarding SWBT's provisioning of loops used by competitors to provide advanced services. Therefore, the Texas Commission has reexamined the record evidence, analyzed SWBT's supplemental filing, reviewed further performance measurement data, and conducted xDSL performance measure and implementation workshops attended by SWBT and a broad range of Texas CLECs. Based upon the foregoing, the Texas Commission concludes that SWBT provides nondiscriminatory access to loops used by competitors to provide advanced services.

A. Regulatory Requirements

The Texas Commission held a workshop to determine whether SWBT had fully implemented the process improvements ordered by the Texas Commission at the December 16, 1999 open meeting, as well as the changes necessitated by the arbitration award issued on November 30, 1999 and the Revised Final Order of the Texas Commission.[65] The Texas Commission believes that based on the supplemental filing by SWBT and the evidence adduced at the workshop, SWBT is in full compliance to date with the arbitration award and has implemented all of the requirements of the December 16 open meeting.[66]

The Texas Commission finds that SWBT has dismantled its Separate Feeder Separation (SFS) Binder Group Management (BGM) system.[67] Although commenters have made general allegations that SWBT has not dismantled its SFS BMG system, these commenters fail to provide any direct evidence of same. By contrast, SWBT has explained that SFS was only possible through the use of Loop Facilities and Assignment Control System (LFACS), which selectively assigned pairs within the outside plant. Before SFS was dismantled, LFACS mechanically segregated ADSL-based services from

[64] These improvements included the ordered improvements at the December 16, 1999 Open Meeting and the improvements ordered under the xDSL Arbitration Award issued November 30, 1999.

[65] *See Petition of Rhythms Links, Inc. for Arbitration to Establish and Interconnection Agreement with Southwestern Bell Telephone Company*, PUCT Docket No. 20226 and *Petition of Dieca Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, PUCT Docket No. 20272, Arbitration Award (November 30, 1999) (hereinafter "xDSL Arbitration Award").

[66] SWBT has implemented the requirements of the xDSL Arbitration Award to date. To the extent that some of the requirements are scheduled for implementation in the future, the Texas Commission can only state that given what SWBT has filed to date, the Texas Commission expects that SWBT will be in full compliance.

[67] This was ordered at the December 16, 2000, Open Meeting and in the xDSL Arbitration Award.

other data services in order to minimize transmission degradation.[68] LFACS used a special code, ADSY, to process and segregate ADSL orders; this code was imbedded in the LFACS system.[69] Without the coded system, the database is unable to selectively place certain technologies in certain binder groups. SWBT has indicated that in early December of 1999 personnel started the programming changes necessary to delete the ADSY designation from the LFACS system. In addition, SWBT manually removed the designation from loops that were already in the system but not processed.[70] SWBT removed the programming and manual changes in the system by December 31, 1999.

Commenters argue that SWBT has not actually dismantled its SFS system because the PSD masks are still required to order a xDSL capable loop.[71] Because the PSD masks must be reported for inventory purposes, CLECs complain that SWBT rejects orders based on this information. SWBT has indicated that the PSD mask is only used for inventory purposes so that disturber information is accessible if needed.[72]

In response to CLEC complaints, at the December 16, 1999 open meeting, the Texas Commission ordered SWBT to provide CLECs with the capability to provision loops "as is" and eliminate rejections based on PSD mask compatibility.[73] By specifying "as is" on the LSR, the CLEC can instruct SWBT to process an order even if the loop does not meet SWBT PSD masks. The CLECs, however, do not use this functionality often, as some have indicated that there is risk associated with "as is" because the design loop make-up information may not reflect the actual loop information.[74] CLECs also argue that the process is inconvenient and administratively burdensome. The Texas Commission believes that the process should be efficient for CLECs and ASI, and will consider any improvements in the provisioning process on a going forward basis. The Texas Commission notes, however, that the database is the same for CLECs and SWBT retail or its separate affiliate.

There are two processes available to CLECs to order xDSL loops, the "one-step" process and the newer "two-step process." The one-step process includes the loop make-up request and order in the same process. Under the two-step process, loop make-up information is a pre-order function and is followed by the CLEC sending an LSR for the loop. The two-step process is the procedure ordered by the Texas Commission in December 1999. In addition to not availing themselves of the "as is" process, CLECs

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[68] Supplemental Affidavit of Nancy L. Meierhoff, Supplemental Application of Southwestern Bell Telephone Company, App., Vol. D, Tab 5, paras. 13-18 (April 5, 2000); *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUCT Project No. 20400, Workshop Transcript (April 14, 2000) at 625-32 (attached hereto as Exhibit 3).

[69] *Id.*

[70] *Id.*

[71] Exhibit 3 at 670-76.

[72] Supplemental Joint Affidavit of Carol A. Chapman and William R. Dysart, Supplemental Application of Southwestern Bell Telephone Company, App., Vol. D, Tab 1 at para. 86 (April 5, 2000) (hereinafter "Chapman/Dysart Aff.").

[73] Exhibit 3 at 625-50.

[74] *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company of Texas*, PUCT Project No. 20400, Workshop Transcript (April 13, 2000) at 273 (attached hereto as Exhibit 2).

appear reluctant to use the "two-step" process, which also was constructed in order to address CLEC concerns by separating the pre-order and order process. In spite of complaints, many CLECs continue to use the "one-step" process.[75]

Both the "as is" and the "two-step" solutions address problems CLECs have targeted; yet generally, CLECs fail to utilize them. CLECs appear to prefer the one-step process in the situation where the loop make-up information is not electronically available. When loop make-up information is electronically available, the two-step process is preferable.[76] The Texas Commission will consider additional ways to address CLEC issues on a going-forward basis in the implementation docket of the arbitration award. However, the Texas Commission strongly believes that the processes for pre-order and ordering functions currently in place provide CLECs with a meaningful opportunity to compete.

SWBT also no longer requires manual loop qualification for xDSL loops under 12,000 feet. This option was provided to the CLECs as a change to the one-step process, eliminating the need for manual loop qualification when the loop is less than 12,000 feet. SWBT notified CLECs of this process by accessible letter on January 4, 2000 and added the information to the online CLEC handbook.[77] If the theoretical loop length is 12,000 feet or under and the CLEC specifies "as is," SWBT will provision the loop once it has received a valid LSR from the CLEC. No loop qualification is required and any conditioning required would be at SWBT's expense. During the workshop on implementation issues, CLECs had clarifying questions regarding the process, but no evidence was presented that SWBT has not implemented this requirement.[78]

CLECs may submit loop pre-qualification by email until OSS enhancements allow for access over Verigate and Datagate. SWBT implemented this requirement in December of 1999 and formally announced the option in the January 4, 2000 accessible letter. CLECs have indicated that this process works and that orders have been submitted using it.[79] In addition, SWBT clarified on the record that conditioning intervals apply only when a CLEC requests conditioning. If a CLEC does not request conditioning, even if SWBT recommends conditioning, the order will be processed under the timelines established for non-conditioned loops rather than the timelines where conditioning is required.[80]

SWBT also has implemented its commitment to offer CLECs an acceptance testing option in their interconnection agreements.[81] Some CLECs do have this option currently in their agreements and acceptance testing is available to all CLECs who request it. Finally, SWBT has incorporated its commitments into training that is provided

[75] *Id.* at 41-46.
[76] *Id.* at 42.
[77] Dysart/Chapman Aff. at para. 73.
[78] Exhibit 3 at 733-46.
[79] *Id.* at 747.
[80] Dysart/Chapman Aff. at para. 88; Exhibit 3 at 750-52.
[81] Dysart/Chapman Aff. at para. 89; Exhibit 3 at 753-55.

for xDSL under the UNE training program. CLECs who did not receive this training because they attended a session before this enhancement are allowed to attend the DSL portion at no charge. This is available to all CLECs and was distributed by way of a January 7, 2000 Accessible Letter.

As part of the requirements of the arbitration award, SWBT has stated that it has complied with all provisions to date, including revising the definition of a xDSL loop, shortening provisioning intervals as ordered in the award, and taking additional steps to ensure that proprietary information is protected. Also, performance measures are being developed in workshops for the six-month review process, which also encompasses the award commitments.

As part of the arbitration award SWBT is also making the required upgrades to the OSS systems in order to provide CLECs with access to the new UNE. SWBT will offer mechanized loop qualification currently scheduled for release on April 29, 2000.[82] This will enable CLECs virtually real time actual loop make-up information. Any information regarding the loop in SWBT's system will be available to the CLECs. This is exactly the same information that SWBT has available to itself. This enhances the CLECs' earlier capability of receiving design loop make-up information or the theoretical information rather than actual loop make-up information. Under this process, if actual loop make-up information is not available, SWBT will provide the design loop make-up through the electronic process.

In addition to the regulatory requirements that SWBT implemented, SWBT also made further process improvements to ensure nondiscriminatory access to advanced services. SWBT created a cross-disciplinary team to develop specific recommendations on how to improve performance where SWBT has fallen short. SWBT has implemented improvements including sending technicians to install xDSL loops on plant test date, rather than waiting for the installation date, so trouble will be caught earlier rather than at the time of installation. SWBT expects this improvement to significantly help installation due dates.[83]

B. Performance Measure Data

In *Bell Atlantic New York*, the FCC stated that performance measures should be established for xDSL in five categories: average completion interval, missed installation appointments, installation quality of xDSL loops provisioned, timeliness and quality of loop maintenance and repair, and timeliness of access to loop qualification and loop make-up information.[84] Performance measures were adopted by the Texas Commission prior to the *Bell Atlantic New York* decision in the collaborative sessions. SWBT has also implemented additional measures as a result of the Commission's and DOJ's concerns, which address issues not originally captured by the performance measures. Finally, as a

[82] Dysart/Chapman Aff. at para. 97; Exhibit 3 at 778.
[83] *Id.* at paras. 67-68.
[84] *Bell Atlantic New York* at para. 334.

consequence of a recent arbitration award, SWBT, CLECs and the Texas Commission staff are revising and developing performance measures in the ongoing six-month review process, as discussed above.

Unlike Bell Atlantic in New York, SWBT has performance measures in place to capture xDSL performance and sufficient volumes to measure compliance.[85] SWBT's reported volumes continue to increase and are much larger than the reported volumes in New York. Furthermore, SWBT is close to implementing line sharing on a full time basis, thus providing better comparisons for performance measures and CLECs a better alternative of provisioning xDSL technologies.

1. Pre-order

PM 57 captures the average response time for loop make-up information for both manually and electronically generated xDSL orders. The start time is the time an accurate LSR is submitted to SWBT and the end time is the time the LSC returns the loop make-up information to the CLEC.[86] SWBT's performance for February was slightly below compliant levels, but for January and March, the performance was better than parity on significantly increasing volumes. Specifically, in March the average response time for CLECs was 2.63 days compared with 5.39 days for SWBT. In addition, the volumes increased from 112 orders in September to 1,900 orders in March.

Under PM 5.1, SWBT implemented and collected data for the percentage of FOCs for xDSL-capable loops for both electronically and manually generated orders. Under the one-step process, the start time is the time the loop make-up information is returned by the engineers to the LSC and the end time is the time the order is processed and the FOC is sent back to the CLEC. In the one-step process, the pre-order response loop make-up information, captured in PM 57, starts when an accurate LSR is received by SWBT and the ends when the LSC returns the loop qualification to the CLEC. Under the two-step process, the time starts when an accurate LSR is submitted and ends when the FOC is sent back to the CLEC.

The data indicates that the majority of CLECs use LEX to submit LSRs (1452 orders). The benchmark is 95 percent within 24 hours; SWBT's performance for March was slightly below the benchmark at 92 percent. Only 18 LSRs were submitted using EDI and the performance delivered was 94 percent. CLECs submitted 217 LSRs manually and the FOC return percentage was 86 percent. Although SWBT's performance for manually submitted LSRs is below the benchmark, manual handling will continue to decrease as more orders are placed electronically. The Texas Commission believes that because of the small volume of manual orders, SWBT's overall performance under PM 5.1 provides CLECs with a meaningful opportunity to compete.

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[85] *See Bell Atlantic-New York* at para. 331.

[86] SWBT previously counted the stop time upon the LSC's receipt of loop make-up information. SWBT corrected the way the stop time was measured and as of January includes the time until the information is sent back to the CLEC. *See* Exhibit 2 at 20.

2. Provisioning

PM 55.1 measures the average installation interval for xDSL loops with and without conditioning and is a parity measure. SWBT provided better than parity performance for loops that required no conditioning for January through March. Volumes during January through March were 329, 504, and 705 respectively. Volumes during January through March for loops requiring conditioning were 33, 91, and 155 respectively. For conditioned loops, the January performance was out of compliance, but February performance was compliant and March performance was even better, all while order volumes increased. In addition, SWBT has indicated that even after CLEC requested due dates outside the provisioning interval are excluded, PM 55.1 is capturing over 70 percent of all xDSL orders.[87] This directly addresses earlier criticism that the number of exclusions in PM 55.1 made the measure unreliable.[88]

PM-55.1 Average Installation Interval for xDSL Loops With and Without Conditioning

	January	February	March
SWBT No Conditioning	7.9	7.6	7.8
CLEC No Conditioning	7.7	6.7	6.0
SWBT Conditioning	15.0	14.4	10.7
CLEC Conditioning	20.4	16.3	10.2
CLEC Volumes No Conditioning	329	504	705
CLEC Volumes Conditioning	33	91	155

PM 58 captures the percent of SWBT missed due dates. Currently, the measure compares CLEC xDSL loops to SWBT's DS1 loops; however, during the xDSL performance measure workshop on April 13th, parties agreed that this was not the appropriate comparison.[89] Because the appropriate analog is difficult to establish, during the six-month review, the Texas Commission is considering what the appropriate benchmark should be based on proposals from CLECs and SWBT. The Texas Commission believes that the measure should ultimately compare stand-alone loops to stand-alone loops and line-sharing loops to line-sharing loops.

As the table below shows, SWBT's performance under PM 58 was non-compliant in January and February, but compliant in March. For January, CLECs had 15.45 percent of their due dates missed compared to 7.63 percent for SWBT. Likewise, in February, CLECs had 16 percent of their due dates missed, while SWBT had 5.73 percent. In

[87] Letter from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4, (January 21, 2000) (hereinafter "SWBT January 21, 2000 *Ex Parte* Letter").
[88] *See* Department of Justice Evaluation at 16.
[89] Exhibit 2 at at 342-85.

March, SWBT's performance improved significantly. CLECs had 7.68 percent of their due dates missed compared with 6.53 percent of SWBT's missed due dates. From January to February the order volume increased by 33 percent, while the relative missed due date performance degradation was only .5 percent. Performance data from February to March shows that the order volume increased by 30 percent and relative performance improvement was 8.3 percent. Although the performance has been non-compliant in past months, the Texas Commission believes that the trend in this measure is the same seen throughout SWBT's performance data—the volumes are increasing as the performance is improving.

PM 58 Percent SWBT Caused Missed Due Dates

							Actual Data
12	128	134	3887	9.38%	3.45%	**3.52**	Oct.
35	346	178	4056	10.12%	4.39%	**4.77**	Nov.
60	495	273	4305	12.12%	6.34%	**4.79**	Dec.
108	699	392	5135	15.45%	7.63%	**6.93**	Jan.
149	931	404	7048	16.00%	5.73%	**11.60**	Feb.
93	1211	757	11585	7.68%	6.53%	**1.52**	March
457	3810	2138	36016	11.99%	5.94%	**14.41**	6 mo. average

Additionally, SWBT's performance may be distorted based on the fact that the measurements are capturing different circumstances; the CLECs are provisioning new loops for the xDSL service while SWBT is provisioning xDSL over the high frequency portion of already operable loops.[90] Because CLECs are not currently line sharing with SWBT, their services depend on spare copper, much more so than orders placed by ASI. Because the current measure does not distinguish between the two, it is plausible that SWBT's loops are less likely than CLEC loops to run into lack of facilities problems.[91] SWBT's data indicate that lack of facilities is the factor in 60 percent of the missed due dates.[92] Therefore, in addition to considering the substantial improvement in performance as volumes increase, the Texas Commission believes that it is relevant to consider performance adjusted to address lack of facilities.

[90] Dysart/Chapman Aff. at para. 36.
[91] *Id.*
[92] *Id.*at para. 35.

The table below shows that including the exclusion for lack of facilities in PM 58-09, SWBT provided parity performance in the last four months.[93] From January to March, SWBT's performance improved greatly, even as CLEC volumes nearly doubled.

PM 58 Percent SWBT Caused Missed Due Dates (Exclusion for Lack of Facilities)

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	FAC Excluded
7	123	96	3849	5.69%	2.49%	**2.20**	October
21	332	135	4013	6.33%	3.36%	**2.79**	November
27	462	246	4278	5.84%	5.75%	**0.08**	December
48	639	361	5104	7.51%	7.07%	**0.41**	January
40	822	374	7018	4.87%	5.33%	**-0.56**	February
34	1152	713	11541	2.95%	6.18%	**-4.44**	March
177	3530	1925	35803	5.01%	5.38%	**-0.91**	**Six Month Average**

PM 61 captures SWBT's average delay days due to lack of facilities. For the last three months, CLECs have experienced fewer average delay days for xDSL loops than SWBT retail, while the order volume for all data CLECs increased.

PM 61 Average Delay Days Due to Lack of Facilities

	January	February	March
SWBT	13.97	14.33	10.5
CLEC	10.22	8.31	8.24
CLEC Order Volume	699	931	1211

PM 62 captures the average delay days for SWBT missed due dates. For the period of January through March, the average delay days for SWBT missed due dates for xDSL loops have declined. Although SWBT missed this measure in February and March, the performance in February and March was close to parity, as the order volumes continue to rise.

PM 62 Average Delay Days for Missed Due Dates

	January	February	March
CLEC Order Volume	699	931	1211
Avg. Days	10.07	7.05	7.23

[93] The Texas Commission subtracted the number of orders from the numerator and denominator for any orders that were excluded as lack of facilities.

3. Trouble Reports After Installation

PM 59 captures the percent of trouble reports within 30 days. Although SWBT's performance has been non-compliant, the trend shows that performance is improving while volumes are increasing. As shown in the table below, SWBT's performance has shown steady improvement.

PM 59 Percent of Trouble Reports Within 30 Days

	CLEC VOLUME	% TROUBLE REPORT
December	489	11.9
January	687	9.0
February	924	8.7
March	1177	6.8

The Texas Commission believes it is relevant to consider the limited exclusions in the Business Rule under this measure. For instance, there are no exclusions for "trouble not found." This situation occurs when a trouble report is filed by a CLEC, but, after SWBT investigates, no trouble is found and the line is in working condition. In that circumstance, SWBT is still penalized for the reported trouble. Another example occurs when CLECs use xDSL capable loops beyond the allowable parameters of the loop, which may result in a trouble report. Likewise, this situation will lead to a trouble report, although SWBT had no responsibility for the occurrence. The Texas Commission believes that SWBT should not be held responsible for non-standard use that may contribute to the out of parity performance. The Texas Commission will review this aspect of the performance measure at the six-month review process to determine the validity of these exclusions. However, under the data as reported, the Texas Commission is encouraged by the continued downward trend of fewer trouble reports, as CLEC volumes continue to increase.

4. Maintenance and Repair

To capture maintenance and repair intervals, SWBT implemented PM 65, trouble report rate, PM 67, mean time to restore, and PM 69, percent repeat reports. PM 65 reports the trouble reports for xDSL loops and shows a declining trend in trouble report rates. Though non-compliant in December and January, SWBT has provided better than parity performance in February and March. In addition, the volumes have increased from 974 in December to 3,628 in March.

PM 65 Trouble Report Rate –xDSL

	CLEC # Circuits in Service	CLEC Perf.	SWBT Perf.	Z-Value
December'99	974	7.7%	4.6%	4.32
January'00	1674	6.3%	4.7%	2.92
February'00	2587	4.6%	4.3%	0.89
March'00	3628	3.3%	4.6%	-3.49

PM 67 captures the mean time to restore and is important to consider in conjunction with the trouble report rates in order for meaningful analysis. For three out of the last four months, SWBT has provided parity or better than parity performance for xDSL loops.

PM 67 Mean Time to Restore –xDSL

	CLEC Circuits in Service	# Trouble Reports	CLEC Avg. Hours	SWBT Avg. Hours	Z-Value
December'99	974	74	13.38	12.56	0.27
January'00	1674	106	15.26	8.44	3.94
February'00	2587	125	10.51	28.65	-0.54
March'00	3628	121	14.37	11.17	1.71

PM 69 captures the percent of repeat reports that are subsequently reported after a trouble report has been issued. SWBT's performance for xDSL loops has been at or better than parity for the last four months.

PM 69 Percent Repeat Reports –xDSL

	CLEC Circuits in Service	# Initial Trouble Reports	CLEC % Repeat Reports	SWBT % Repeat Reports	Z-Value
December'99	974	74	13.3%	12.5%	0.21
January'00	1674	106	17.0%	12.9%	1.17
February'00	2587	125	11.7%	13.8%	-0.64
March'00	3628	121	9.2%	11.1%	-0.61

5. BRI loop performance

Commenters, including DOJ, have isolated BRI loop performance as an area in which SWBT falls short of compliance. The Texas Commission has conducted an extensive review of data on these measures and considered all the evidence in the record before this Commission. SWBT's performance in this area lags behind its performance for xDSL loops. One possible explanation proffered by SWBT is that data CLECs are using these loops predominately for IDSL, which in some cases is not compatible.[94] Lack of testing capabilities and differences by which the services are provisioned may also effect performance under this measure.[95] The Texas Commission cannot determine the reasons why this performance is non-compliant because CLECs have not brought any complaints to the Texas Commission regarding compatibility of BRI loops and IDSL technologies. The Texas Commission is considering all of these factors as it reviews performance data in the six-month review process and analyzes the BRI data consistent with that approach. The Texas Commission is encouraged that, when evaluating these measures, without taking into consideration possible factors that contribute to substandard performance, SWBT's performance still continues to improve.

PM 56 captures the percent of BRI loops installed within 3 days. SWBT did not meet the performance benchmark of 95 percent in January through March. The average installation interval for 12 months has ranged from 2.9 days to 6.7 days for CLECs. The average installation interval for SWBT's retail BRI-ISDN service, captured under PM 43, has ranged from 7.94 days to 12.06 days. The Texas Commission is also evaluating whether the 3-day benchmark is appropriate in light of the fact that SWBT's retail BRI-ISDN service installation interval is much higher. In addition, PM 55-03, a diagnostic measure that captures the average installation interval for BRI loops was at 5.2 days for the twelve-month total. In light of the availability of a parity comparison, the Texas Commission believes that it may be appropriate to compare CLEC performance with SWBT's retail analogue.

Additionally, for BRI loops under PM 58, SWBT's performance has steadily improved as order volumes have risen. As the table below indicates, SWBT's missed due dates for CLECs has declined from 30.5 percent in January to 15.9 percent in March while the volume increased from 499 to 853 during this period. Like PM 56, this measure compares SWBT's retail service interval of five days with a three-day interval for CLECs.

[94] Dysart/Chapman Aff. at para. 52.
[95] *Id.* at paras. 51-63.

PM 58 Percent SWBT Caused Missed Due Dates-BRI Loops

	CLEC Circuits	# Missed Due Dates	CLEC Perf.	SWBT Perf.	Z-Value
December'99	374	87	23.3%	15.5%	3.93
January'00	499	152	30.5%	14.5%	9.40
February'00	596	142	23.8%	20.0%	2.19
March'00	853	136	15.9%	16.7%	-0.54

PM 61 captures the average delay days due to lack of facilities for BRI loops. SWBT has provided parity or better than parity performance for the last six months. Under PM 62, average delay days for SWBT-caused missed due dates for BRI loops, SWBT has provided parity or better than parity performance for three of the last four months.

SWBT's performance for PM 65, trouble report rate for BRI loops with test access, has been non-compliant, although the trouble report rate has decreased every month for the last four months. For December through March, the trouble report rate has decreased from 19 percent to 6 percent as the volume of working BRI loops has steadily increased. Additionally, as in other trouble report measures, no exclusion exists for "trouble not found," which may cause this measure to be overstated.

SWBT's performance was non-compliant for January through March for PM 67, mean time to restore for BRI loops. SWBT has stated that the lack of full testing capability for IDSL technology over BRI loops is a contributing factor in identifying the trouble and clearing the trouble once it is reported.[96] The Texas Commission believes that this is a possible cause of substandard performance, especially in light of the fact that SWBT's performance regarding xDSL loops for the same measure is vastly different. However, as stated above, the Texas Commission has not made any factual determinations regarding this issue and believes that it is appropriate to consider as part of the six-month review. One possible solution might be to ensure more coordination between SWBT and CLECs in testing such loops, which will reduce the time to repair.

PM 69 captures the percent of repeat reports for BRI loops. SWBT has provided parity or better than parity for four out of the last six months. SWBT's performance was non-compliant in January and February. However, in March, the performance increased to a compliant level on comparable volumes.

C. Line Sharing

Performance measurements show that today SWBT provides nondiscriminatory access to CLECs. When line sharing is in place for CLECs, easier comparisons will

[96] *Id.* at para. 63.

allow for more meaningful measures. SWBT has given CLECs access to testing of line sharing, in compliance with the Line Sharing Order. SWBT has implemented testing trials with CLECs, held industry forums, and discussed technical applications in order to assure that the line sharing is implemented within the FCC's mandated six-month timeframe. SWBT plans to have line sharing implemented in Texas by May 29, 2000, by aggressively rolling out testing procedures.[97] In addition, SWBT has offered terms and conditions for line sharing as part of Attachment 25 to the T2A. To the extent that CLECs disagree with SWBT's interpretation of the Line Sharing Order or with the rates that SWBT has proposed, they may negotiate different terms and conditions or they may choose to arbitrate disputed items.

SWBT's high frequency loop offering gives requesting carriers two options regarding ownership of the splitter. SWBT will give the CLEC the option of owning the splitter itself, with the responsibility of forecasting, purchasing, installing, inventorying, provisioning, and maintaining its splitters. Under the second option, SWBT will own, purchase, install, inventory, provision, maintain, and lease splitters subject to the terms and conditions contained in Section 4.8.2 of the T2A.[98] This option will allow CLECs to provide DSL services with limited upfront capital investment in splitters as individual customers are gained.

D. Conclusion

The number of xDSL loops in Texas has increased dramatically even since the initial application was filed by SWBT in January. The steady trend upward shows that CLECs not only have a meaningful opportunity to compete, but are actually deploying advanced services at an aggressive pace. Overall, SWBT's actual performance data shows that SWBT provisions xDSL loops in a non-discriminatory manner. Finally, with few exceptions, SWBT's performance has continued to improve as CLEC volumes increase, thus directly addressing DOJ's overarching concern regarding SWBT's xDSL loop performance.[99] The Texas Commission has reviewed SWBT's performance data extensively to ensure that CLECs receive non-discriminatory performance. SWBT's performance has been painstakingly analyzed and dissected by all participants in this proceeding. While SWBT's performance in limited areas falls short of perfection, the

[97] Supplemental Affidavit of Rod Cruz, Supplemental Application of Southwestern Bell Telephone Company, App., Vol. D, Tab 4 (April 5, 2000) (hereinafter "Cruz Aff.").
[98] *Id.* at paras 23-30.
[99] *See* Department of Justice Evaluation at 10-27.

Texas Commission concludes that SWBT's overall performance in providing loops capable of provisioning advanced services gives CLECs a meaningful opportunity to compete.